

IN THE UNITED STATES  
PATENT AND TRADEMARK OFFICE BEFORE THE  
BOARD OF  
PATENT APPEALS AND INTERFERENCES

In re Application of: Sheppard

Serial No.: 09/837,094

Filed: April 18, 2001

For: JACQUARD OR DOBBY  
WOVEN TEXTILE WITH  
GRAPHIC IMPRESSION AND  
A METHOD OF MAKING THE  
SAME

Group Art Unit: 1771

Examiner: Johnson, Jenna-Leigh

Appeal No.:

March 31, 2008

Mail Stop: Appeal Brief--Patent  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**APPEAL BRIEF UNDER 37 CFR § 41.37**

This is an appeal from the final rejection of the Examiner dated November 1, 2007, rejecting Claims 21, 22, and 24-27, all claims currently pending in the case. A Notice of Appeal and a statement on appeal fees were filed January 31, 2008.

The requisite fees for the prior Notices of Appeal and a prior Appeal Brief were previously submitted on November 24, 2004, December 23, 2004, March 16, 2006 and May 15, 2006 for a total of \$920.00. Since Appellant has not received a decision from the Board, those fees (a total of \$510.00) are to be applied to this appeal resulting in a credit of \$410.00. See MPEP 1204.01.

### **REAL PARTY IN INTEREST**

Inventor James M. Sheppard has assigned all his rights and interests in the current invention to Devant Ltd., a North Carolina Corporation. As such, Devant Ltd. is the real party in interest in this case.

### **RELATED APPEALS AND INTERFERENCES**

Appellant has previously appealed related Application No. 09/747,529, entitled JACQUARD WOVEN TEXTILE WITH GRAPHIC IMPRESSION AND A METHOD OF MAKING THE SAME, having a filing date of December 22, 2000, (Appeal No. 2004-1029). In a decision dated July 29, 2004, the Board reversed the Examiner's previous rejection of record. A copy of the Board's decision is included in the Related Proceedings Appendix. The application is currently subject to a Final Rejection issued October 31, 2007. An appeal and Appeal Brief are expected to be filed shortly in this case.

An appeal has been filed for related Application No. 10/314,794, entitled A METHOD OF MAKING JACQUARD WOVEN TEXTILE WITH GRAPHIC IMPRESSION, having a filing date of February 19, 2003. An Appeal Brief was filed in this related application on December 21, 2007.

The Board is asked to consider all three appeals as a group as the subject matter and rejections of each are related.

### STATUS OF CLAIMS

Pending claims—21, 22 and 24-27

Allowed claims—none

Claims objected to—none

Claims rejected—21, 22, and 24-27.

Claims appealed—21, 22 and 24-27

### STATUS OF AMENDMENTS

No amendment was submitted after the Final Rejection of November 1, 2007.

### SUMMARY OF CLAIMED SUBJECT MATTER

The following table was found to be in compliance with this section of the rules in the petition decision of December 14, 2006.

#### Claim 21

Weaving a towel on a Dobby loom using at least 2 different colors	Application as filed (A.A.F.), page 6, paragraphs 4 - page 7, paragraph 1.
such that a border having a first darker color is woven adjacent. each edge on one side thereof	A.A.F., page 6, paragraph 5 - page 7, paragraph 3; page 8, paragraph 2.
and a border having a second lighter color is woven adjacent each edge of said towel on the other side	A.A.F., page 6, paragraph 5 - page 7, paragraph 3; page 8, paragraph 2. .
said towel having a central area woven within the borders on both sides	A.A.F., page 7, paragraph 3; page 8, paragraph 2.
said central area on other side is woven with first color.	A.A.F., page 7, paragraph 3; page 8, paragraph 2
aid central on said one side is woven in a second color	A.A.F., page 7, paragraph 3; page 8, paragraph 2.
forming a graphic impression in said central area on said one side.	A.A.F., page 8, paragraph 2 - page 9, paragraph 1
said border on said one side is capable of masking said graphic impression that may overlap onto said border from said central area on said one side	A.A.F. page 8, paragraph 3 - page 9, paragraph 1; page 10, paragraph 2; figure 3.
said central area on said second side is capable of masking any potential bleed through of said graphic impression from said central area of said one side.	A.A.F. page 8, paragraph 2 - page 9, paragraph 2.

## **GROUND OF REJECTION TO BE REVIEWED ON APPEAL**

- Claims 21, 22, and 24-27 under 35 U.S.C. §103(a) as being unpatentable over Stark (U.S. Pat. No. 3,669,818) in view of Parker (U.S. Pat. No. 1,925,459), Sherrill (U.S. Pat. No. 3,721,273) and Terrasse (U.S. Pat. No. 2,163,769)
- Claims 21, 22, and 24-27 under 35 U.S.C. §103(a) as being unpatentable over Stark in view of Parker and Sherrill
- Claims 21, 22, and 24-27 under the judicially created doctrine of obviousness-type double patenting over the claims of copending Application No. 09/747,529.

## **ARGUMENT**

### **Rejection of claims 21, 22, and 24-27 under 35 U.S.C. §103(a) as unpatentable over Stark, Parker, Sherrill and Terrasse**

#### **A. Separate argument for claim 21**

##### **a. Legal standard**

A claim is obvious only when the subject matter of the claim as a whole would have been obvious to a person having ordinary skill in the art. 35 U.S.C. § 103(a). As set forth in *KSR Int'l Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007).

[A] patent composed of several elements is not proved obvious merely by demonstrating that each of its elements was, independently, known in the prior art. Although common sense directs one to look with care at a patent application that claims as innovation the combination of two known devices according to their established functions, it can be important to identify a reason that would have prompted a person of ordinary skill in the relevant field to combine the elements in the way the claimed new invention does.

**b. Claim construction**

"[A]s an initial matter, the PTO applies to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification." *In re Morris*, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997).

Here, in considering the scope of claim 21 it is important to understand the meaning of the functional language used in defining the claimed towel. Specifically claim 21 requires that the darker color border on the one side be capable of masking the graphic impression that may overlap onto that border from the lighter color central area on the one side. This functionality is important because it eliminates the need for precise alignment of the graphic impression within the light color central area of that side. Furthermore, the darker color central area on the other side is capable of masking any potential bleed through of the graphic impression from the light color central area of the one side. These functional requirements impose structure on the claimed towel.

**c. Analysis**

This rejection is set forth on pages 8-9 of the Examiner's Answer entered June 28, 2007 and repeated at page 2 of the Final Rejection of November 1, 2007. In making this rejection, the Examiner incorporates her analysis of Parker and Stark from the other obviousness rejection premised upon Parker, Stark and Sherrill. Examiner's Answer, page 8. Thus, the two obviousness rejections are intertwined. In reviewing this rejection, it should be understood that Terrasse describes what Appellant has admitted from the time this application was filed, i.e., towels woven on a Jacquard or Dobby loom<sup>1</sup> are known to have one side with a darker color border and a lighter color central area with the other side having the opposite appearance—a lighter color border and a darker color central area (Terrasse, Figs. 1 and 2; present specification, paragraph bridging

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<sup>1</sup> For the purpose of this appeal, Appellant will not argue that Jacquard and Dobby weaves are patentably distinct.

pages 2-3). Once the Examiner became aware of Terrasse, there was no reason for her to continue to use Parker in the rejection. See, Examiner's Answer, page 5 where the Examiner attempts to explain why it would have been obvious to modify Parker in order to arrive at a towel that is described by Terrasse and acknowledged by Appellant to be known. Thus, Appellant will argue the more encompassing rejection that includes Terrasse first.

It is submitted that a more logical way to approach this rejection is to break the rejection into two issues—(1) would it have been obvious to modify the towel of Terrasse by forming a graphic impression in the lighter color central area on the stated one side wherein the specific towel selected is constructed and the colors of the graphic impression are selected such that the darker color border on the one side is capable of masking the graphic impression that may overlap onto the border from the lighter color central area on the one side, eliminating the need for precise alignment of the graphic impression within the central area of the one side; and wherein the darker color central area on the second side is capable of masking any potential bleed through of the graphic impression from the lighter color central area of the one side; and (2) would it have been obvious to shear the one side of the Terrasse towel to a height of about 75 to about 95% of the height of the other side and bloom the one side such that a graphic impression can be intensely applied thereto. It is believed that both issues should be resolved in favor of Appellant.

#### **i. Issue 1**

Again, Terrasse essentially describes what Appellant has admitted in the specification, i.e., towels that have the color pattern required by claim 21 were known. However, Terrasse does not teach or suggest that the towels of that reference should have a graphic impression on the light color central area or that the towel should be constructed such that, in combination with the graphic impression, the claimed functional requirements are achieved.

Stark describes a textile product, e.g., a towel, that has a surface pattern of varying heights. *Id.*, column 1, lines 24-38. Stark indicates that prior to that invention, it was known to superimpose a printed image on a patterned textile in register with the

pattern. *Id.*, column 1, lines 40-47. The invention of Stark is to superimpose a printed pattern on the surface of the patterned textile that is out of register with the underlying pattern. *Id.*, column 1, lines 58-63. The out of register superimposed pattern creates a "highly attractive visual appearance." *Id.*, column 2, lines 39-55. In other words, Stark purposely prints the pattern out of register with the underlying woven pattern in order to create a visual appearance. This is in direct contrast to the requirements of claim 21 that the darker color border on the one side mask any out of register printed material thereby avoiding the creation of the visual appearance that is desired by Stark.

Here, at most, a person of ordinary skill in the art would have found it obvious to form a graphic impression on the towel of Terrasse according to the teachings of Stark. However, that would not result in the towel of claim 21. For example, why would it have been obvious to print the graphic on the lighter color central area of Terrasse instead of the darker color central portion of the other side? Assuming it would have been obvious to print a graphic on the lighter color central portion of the towel of Terrasse, why would it have been obvious to choose colors in the graphic impression and the towel such that any overlap of the graphic onto the border or any bleed through of the graphic impression from the lighter color central area would be masked? Stark does not provide evidence that those choices would have been obvious and, indeed, teaches away from the towel of claim 21 as any overlap of the graphic impression is not to be masked, but rather, is to create a visual impression.

First, Stark does not discuss the problem of potential bleed through of the printed graphic so Stark provides no guidance as to how to resolve that problem. Second, the prior art discussed in Stark printed a pattern on a textile that was in register with the pattern of the textile. In register printing means that care must be taken in the printing process to insure there is no overlap onto a border portion of the textile. Stark does not provide any suggestion that registry concerns can be solved by matching the color of the graphic and the border portion of the textile so that any overlap is masked. The towel of claim 21 represents a substantial improvement over the prior art portion of Stark since registry problems are avoided in the present towel. Third, the inventive concept of Stark, intentionally printing the graphic out of register with the pattern of the textile, teaches away from the towel of claim 21. This is seen in that the intentional out of register

printing which forms the invention of Stark provides a “highly attractive visual appearance.” *Id.*, col. 2, lines 51-55. This is the exact opposite of the functional requirements of claim 21 where the color of the graphic impression and the border area of the textile are chosen so that any out of register printing, i.e., overlap on to the border, is masked. These are structural differences in claim 21 that are neither taught nor suggested by Terrasse and Stark.

The Examiner states that it is well known in patent law that matters relating to ornamentation only which have no mechanical function, cannot be relied upon to patentably distinguish the claimed invention from the prior art. See, e.g., the paragraph bridging pages 5-6 of the Examiner’s Answer. However, such statements only demonstrate that the Examiner has not understood the structure that is behind these functional statements. As has been repeatedly stated, the darker color border surrounding the lighter color central area is capable of masking any printed pattern that might overlap onto the border from the central area. This eliminates the need for precise alignment of the graphic impression. In similar fashion, the darker color central area on the reverse side of the towel is capable of masking any potential bleed through of the printed design on the lighter color central area of the one side.

Another example of the Examiner’s failure to understand the import of the functional language of claim 21 and the structure it imposes on the towel of claim 21 is seen in the passage set forth on pages 3-4 of the Final Rejection. Therein, the Examiner makes the following statements:

- Claim 21 states that the graphic impression may overlap the border, not that it does. The Examiner is correct in reading claim 21 this way but misses the point. Because of the needed selection of colors in the graphic impression and border area of the claimed towel, any overlap of the graphic impression onto the border is masked. This allows for a fuller range of colors and patterns to be used in the graphic impression since once the graphic impression is chosen, a color scheme for the towel is chosen so that any overlap is masked. In this way, production of the towel is simplified since out of register (overlap) products are not of concern. What might be considered scrap in the prior art becomes a useful product.



The same consideration applies to the structure of the claimed towel where the darker color central area on the other side masks any bleed through.

- “Capable of” performing a function is not a positive limitation,” citing “*In re Hutchinson*, 69 USPQ 138.” ].” Rather than invoke a *per se* rule, the MPEP instructs the Examiner to consider such claim phraseology on a case by case basis. MPEP 2111.04 states:

Claim scope is not limited by claim language that suggests or makes optional but does not require steps to be performed, or by claim language that does not limit a claim to a particular structure. However, examples of claim language, although not exhaustive, that may raise a question as to the limiting effect of the language in a claim are:

- (A) “adapted to” or “adapted for” clauses;
- (B) “wherein” clauses; and
- (C) “whereby” clauses.

The determination of whether each of these clauses is a limitation in a claim depends on the specific facts of the case.

Here, as explained above, the “capable of” language used in claim 21 imposes structure on the claim. The claim language is not “intended use” as asserted by the examiner but, rather imposes or imparts significant structural requirements on the claimed towel. Furthermore, in *Innova/Pure Water, Inc. v. Safari Water Filtration Sys. Inc.*, 381 F.3d 1111, 1117-20 (Fed. Cir. 2004), the court noted that the term “operatively connected” is a general descriptive term frequently used in patent drafting to reflect a functional relationship between claimed components,” that is, the term “means the claimed components must be connected in a way to perform a designated function.” Thus, it is error on the part of the Examiner to not give weight to the functional requirements of claim 21.

- “Any light or darker colors inherently have the ability to mask some colors.” This is a truism but again misses the point. Where does the applied prior art teach or suggest taking advantage of this property as in the claimed towel? Stark aptly illustrates the state of the prior art as well as the thinking of those of ordinary skill in the art. You either print in register with its attendant cost and limitations on color selection on the graphic impression and towel or deliberately print out of register to create an aesthetically pleasing visual effect. Sherrill prints in register

so that reference adds nothing to the discussion. Viewing the applied references together, as a whole, it is seen that the towel of claim 21 could be obtained, if at all, only through happenstance in the prior art. Happenstance is neither inherency nor obviousness.

- “[N]o color would be able to mask every possible printed color.” This statement by the Examiner in essence makes Appellant’s case. Again, this is a truism but it makes the point that the towel of claim 21 requires a coordination of colors between the graphic image and the border and central areas of the towel in order to realize the functional requirements. As explained above, these functional requirements impose structure on the towel and graphic impression and must be given weight by the Examiner.

It is recognized that one of ordinary skill in the art is presumed to have skills apart from what the prior art references explicitly say. *See In re Sovish*, 769 F.2d 738, 743, 226 USPQ 771, 774 (Fed. Cir. 1985) and that person is also a person of ordinary creativity, not an automaton. *KSR International Co. v. Teleflex Inc.*, 127 S.Ct. 1727, 1742, 82 USPQ2d 1385, 1397 (2007). But even these considerations do not help the Examiner’s case. The level of skill in the art is demonstrated by Terrasse and Stark. The references show that the basic woven pattern was known and that printing a graphic on the surface of an already patterned textile was known, both in register and out of register. The “common sense” of the person of ordinary skill at the time of the present invention was to print in register and avoid any overlap, which limits the color choices to be used in the graphic, or to purposely print out of register to create a desired visual effect and not be concerned about the visual effect of overlap. It is only through impermissible hindsight that one can say the combination of Terrasse and Stark renders the towel of claim 21 obvious.

## ii. Issue 2

Sherrill describes a terry towel having one face cotton terry, and the opposite face rayon terry. As seen in the Figures of Sherrill, the first side (Fig. 1) has printed thereon a central design, and an outer region having additional printed designs thereon. The second side (Fig. 2) is entirely of cotton terry without any designs. The

rayon terry loops are sheared. *Id.*, col. 2, line 60-col.3, line 2. The sheared rayon terry loops may have a pattern printed thereon where the colorant may be driven into the sheared rayon terry loops. *Id.*, col. 3, lines 46-60.

Viewing Terrasse and Sherrill together it is seen that the two references do not provide any teaching directing one to shear and bloom and form a graphic impression on the one side of the towel of Terrasse that has a lighter color central portion as required by claim 21. As explained above, the choice of sides of the towel of Terrasse on which to place a graphic impression is important as choosing the one side with the lighter color central area provides the functional advantages of masking any printed pattern that might overlap onto the border from the central area and masking any potential bleed through of the graphic impression on the lighter color central area of the one side. These advantages are neither taught nor suggested by Terrasse and/or Sherrill.

Reversal of the rejection is courteously solicited.

**B. Claims 22 and 24-27 are not separately argued**

For the purposes of this appeal only, dependent claims 22 and 24-27 are not separately argued.

**Rejection of claims 21, 22, and 24-27 under 35 U.S.C. §103(a) as being unpatentable over Stark, Parker and Sherrill**

As explained above, this rejection is subsumed by the rejection based upon these three references and Terrasse. Parker teaches jacquard woven fabrics having contrasting colors. It doesn't suggest that the contrasting colors are on opposite sides to one another. This reference is weaker than Terrasse which clearly states and shows contrasting colors on opposite sides of a textile. If the rejection (on page 4 of this Brief) employing Stark, Parker, Sherrill and Terrasse is reversed, then this rejection (having one less reference) will also be reversed. If the rejection employing Stark, Parker, Sherrill and Terrasse is affirmed, then this rejection is moot. For the reasons set forth above in regard to claim 21, the rejection based upon these three references should also be reversed.

**The provisional rejection of claims 21, 22, and 24-27 under the judicially created doctrine of obviousness-type double patenting over the claims of copending Application No. 09/747,529.**

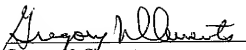
This is a provisional rejection. As indicated to the Examiner, the Appellant is willing to file a terminal disclaimer upon indication of allowable subject matter in either this case, or the related case.

**Summary**

Both obviousness rejections should be reversed as the applied references do not teach or suggest the claimed subject matter. Upon indication of allowable subject matter, a terminal disclaimer will be filed to obviate the obviousness-type double patenting rejection.

Respectfully submitted,

Date: March 31, 2008



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## CLAIMS APPENDIX

The claims on appeal appear as follows:

21. A towel having a graphic impression, produced by:

weaving a towel on a Dobby loom using at least two different colors of yarn, such that a border having a first darker color is woven adjacent each edge of said towel, on one side thereof, and a border having a second lighter color is woven adjacent of said towel on the other side, said towel having a central area woven within said borders on both said one side and said other side, said central area on said other side is woven with said first darker color, said central area on said one side is woven with said second lighter color,

shearing said one side to a height of about 75 to about 95% of the height of said other side;

blooming said one side such that a graphic impression can be intensely applied thereto;

forming a graphic impression in said central area on said one side, wherein said towel retains its preprinted water absorbency characteristics; and

wherein said border on said one side is capable of masking said graphic impression that may overlap onto said border from said central area on said one side, eliminating the need for precise alignment of said graphic impression within said central area of said one side; and wherein said central area on said second side is capable of masking any potential bleed through of said graphic impression from said central area of said one side.

22. The product of claim 21, wherein said forming is by screen printing, image dyeing, digital imaging, or heat transferring.

24. The product of claim 21, wherein said graphic impression has at least two different colors, neither being said first nor said second color.

25. The product of claim 21, wherein said border shape is selected from the class of rectangular shape, circular shape, oval shape, square shape, and irregular shape.
26. The product of claim 25, wherein said border is solid or a pattern.
27. The product of claim 26, wherein said pattern is selected from the class consisting of stripes, dots, names, silhouettes of sport players, animal shapes, corporate logos, or university mascots.

**EVIDENCE APPENDIX)**

None.



**RELATED PROCEEDINGS APPENDIX**

Attached hereto is a copy of the Board opinion dated July 29, 2004 for the related Application Serial No. 09/747,529.

The opinion in support of the decision being entered today was not written for publication and is not binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES

Ex parte JAMES M. SHEPPARD, JR.

Appeal No. 2004-1029  
Application No. 09/747,529

HEARD: July 14, 2004



Before FRANKFORT, MCQUADE, and BAHR, Administrative Patent Judges.

FRANKFORT, Administrative Patent Judge.

DECISION ON APPEAL

This is a decision on appeal from the examiner's final rejection of claims 21 through 36, all of the claims remaining in this application. Claims 1 through 20 have been canceled.

As noted on page 1 of the specification, appellant's invention relates to both a textile article and a method of making the textile article, wherein the textile article is a two-sided Jacquard woven textile product (e.g., a towel) with a

graphic impression on at least one side thereof. The method of making the article as described in the specification comprises the steps of a) providing a two-sided Jacquard woven textile wherein the front side of the textile or towel has, for example, a dark color border adjacent each edge and a light color area within the borders, while the reverse side has a light color border adjacent each edge and a dark color area within and surrounded by the borders, and b) subsequently transferring a graphic impression onto the towel, preferably in the light color central area of the front side, by screen printing, image dyeing, digital imaging, or heat transferring. Independent claims 21 and 29 are representative of the subject matter on appeal and a copy of those claims can be found, respectively, in the Appendix to the examiner's answer and the Appendix to appellant's brief.

The prior art references of record relied upon by the examiner in rejecting the appealed claims are:

Hobson	4,259,994	Apr. 7, 1981
Carpenter et al.	5,983,952	Nov. 16, 1999
(Carpenter)		

Claims 21 through 36 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Hobson in view of Carpenter.

Rather than reiterate the conflicting viewpoints advanced by the examiner and appellant regarding the above-noted rejection, we refer to the examiner's answer (mailed August 27, 2003) and to appellant's brief (filed June 25, 2003) and reply brief (filed October 6, 2003) for a full exposition thereof.

#### OPINION

Having carefully reviewed the obviousness issue raised in this appeal in light of the record before us, we have come to the conclusion that the examiner's rejection of claims 21 through 36 under 35 U.S.C. § 103 will not be sustained. Our reasoning in support of this determination follows.

After a careful evaluation of the teachings and suggestions to be derived by one of ordinary skill in the art from the patterned terry fabric and its method of manufacture on a tappet or dobby mechanism as described in Hobson, and the Jacquard weaving system and method set forth in Carpenter for ensuring automatic alignment of a printed pattern with a woven pattern on a textile fabric as that fabric is being formed, it is our opinion that the examiner has failed to meet her burden of

establishing a *prima facie* case of obviousness. More particularly, we are of the view that the examiner's reasoning in support of the obviousness rejection before us on appeal (as expressed on pages 3-7 of the answer) is based almost entirely on speculation and conjecture, and with regard to the basic structure and color scheme of the towel defined in appellant's claim 21 and the textile of claim 29 on appeal, relies entirely upon appellant's own disclosure and teachings to supply that which is lacking in the applied prior art references.

Basically, we share appellant's views as aptly expressed in the brief and reply brief concerning the examiner's attempted combination of the Hobson and Carpenter patents, the failure of either Hobson or Carpenter to disclose borders adjacent each edge of a towel or textile product and a central area within and surrounded by the borders, which central area on one side of the towel or textile product receives a graphic impression, and the failure of either of the applied patents to teach or suggest the particular color arrangement of the borders and central areas required in the claims on appeal. We are also in agreement with appellant concerning the examiner's bald conclusion that "it would have been obvious to one of ordinary skill in the art to

choose various printed designs, as well as choose where to place the printed image on the Hobson product . . ." (answer, pages 3-4), so as to result in a towel or textile like that claimed by appellant. Since neither the applied references nor the examiner provides an adequate factual basis to establish that the towel of claim 21 on appeal or the textile product of appellant's claim 29 would have been obvious to one of ordinary skill in the art at the time of appellant's invention, it follows that we will not sustain the examiner's rejection of those claims under 35 U.S.C. § 103(a).

In addition, we note that the examiner's rejection of claims 22 through 28 and 30 through 36 under 35 U.S.C. § 103(a) based on the combination of Hobson and Carpenter, which claims respectively depend from independent claims 21 and 29, will likewise not be sustained.

Since we have determined that the examiner has failed to establish a prima facie case of obviousness with regard to the claimed subject matter before us on appeal, we find it unnecessary to comment on appellant's evidence of secondary



Appeal No. 2004-1029  
Application No. 09/747,529

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